



Unit Overview

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2.1 Unit Instructions — Scope and Objectives

A. Instructions

To complete this unit, you will need a copy of the Michigan Vehicle Code.

- 1) Read the entire unit.
- 2) Review the Michigan Vehicle Code outline in your copy of the Michigan Vehicle Code.
- 3) Complete the review and instructional activities in Section 2.8, and check your answers using the answer key in Section 2.9.
- 4) Complete the unit evaluation form.

B. Scope and Objectives

This unit is designed to:

- Explain where to find the relevant laws governing traffic violations and how to use these sources of law;
- Briefly overview procedures for handling traffic offenses in district court; and,
- Briefly explain the sanctions that can be imposed for traffic offenses.

After completing this unit you will be able to:

- Locate state statutes, local ordinances, court rules, and appellate case decisions in your collection of legal references;
- Distinguish traffic civil infractions from criminal traffic offenses; and,
- Identify the procedural steps in processing a traffic offense, from the issuance of a citation to the imposition of sanctions.

2.2 Sources of Michigan Traffic Law

In adjudicating a traffic case, the magistrate must first make sure that the violation in question is a civil infraction or criminal misdemeanor over which he or she has jurisdiction. Next, the magistrate must determine the proper procedural steps to take in processing the case after the officer issues the citation. Ultimately, the magistrate must decide whether the defendant's conduct is in violation of state law or a local ordinance and impose the proper penalty. In making all of these decisions, the magistrate must consult Michigan's traffic law. The following discussion is intended to give the magistrate a "road map" through the reference works where Michigan traffic law can be found. These reference works should be available in the court's library. Magistrates can also obtain personal copies of some of these works from the sources noted on the publications list in the Reference Section of this Manual.

Finding Michigan's traffic law can be a confusing enterprise, for the following reasons:

- Because both the state Legislature and local governments enact traffic laws, there is no single official compilation of statutes and ordinances that contains all of Michigan's traffic law. A traffic offender may be cited under state or local law, depending on where the offense occurred and what law enforcement agency took action.
- The Legislature has not put all of its enactments on traffic matters into one place. Michigan legislation is organized by broad topical categories, and statutes involving motor vehicles are scattered throughout these categories. Thus, even though the "Michigan Vehicle Code" contains most of the "rules of the road," the "Penal Code" contains certain additional crimes involving vehicles.
- To some extent, the laws describing the elements of Michigan's traffic violations are compiled separately from the laws describing the procedure for adjudicating traffic violation cases.
- In some cases, one statute may describe an offense, and a second statute may describe the penalty for that offense.

Because Michigan traffic law is not located all in one place, the magistrate must be prepared to consult multiple sources of law in adjudicating a traffic case. The rest of this section describes the most common sources of law.

A. The Michigan Compiled Laws (MCL)

When the Michigan Legislature first enacts a statute, it is referred to as a "Public Act" and given a number. Public Acts are numbered chronologically during the legislative session for a single year; accordingly, the first Public Act enacted during the 1996 legislative session will be cited as "1996 PA 1," and the first Public Act enacted during the 1997 session will be cited as "1997 PA 1." After enactment, Public Acts are incorporated into a statutory compilation known as the Michigan Compiled Laws. The Michigan Compiled Laws is a topical collection of all the statutes enacted by the Michigan Legislature. This compilation is divided into chapters, from 1 to

830, with each addressing a particular broad subject matter. Upon incorporation into the Michigan Compiled Laws, a Public Act will get a new number that corresponds to the topic to which it was assigned.

The following chapters are of particular interest to magistrates in handling civil traffic infraction cases:

- Chapter 257 of the MCL deals with the broad subject of motor vehicles. This chapter contains the Michigan Vehicle Code (MVC), in which the traffic civil infractions are contained. In addition to the MVC, Chapter 257 of the MCL also contains other motor vehicle legislation regarding such things as school buses, accident claims, and vehicle emissions.
- Chapter 600 of the MCL contains the Revised Judicature Act, which addresses the organization and jurisdiction of the Michigan courts. Within Chapter 600, subchapter 85 specifically addresses the powers of district court magistrates. Chapter 600 also contains provisions regarding small claims (subchapter 84), and civil infraction procedures that do not involve traffic violations (subchapters 87-88).

The Legislative Service Bureau is the official publisher of the MCL. However, its compilation is not widely used. More commonly used are the unofficial *Michigan Compiled Laws Annotated (MCLA)* volumes produced by West Publishing Company, and the *Michigan Compiled Laws Service (MCLS)* volumes produced by Lexis-Nexis Matthew Bender, which both contain identical statutory provisions and numbering systems to those found in the Legislative Service Bureau's official publication. In addition to the statutory language, the annotated MCLA and MCLS volumes provide lengthy references to relevant appellate case decisions ("annotations") following each statute. The cases described in the "annotations" often interpret ambiguous language in the statutes or decide the outcome in situations not specifically addressed in the statutes. The annotations also give historical information about a statute's passage in the legislature, such as its Public Act number or effective date.

Of particular value to magistrates is another collection of excerpts from the MCL that can be obtained for a nominal fee from the Michigan Secretary of State.* Entitled Michigan Vehicle Code, this single unannotated volume contains the Michigan Vehicle Code found in Chapter 257 of the MCL, plus all the other MCL provisions relating to use and ownership of vehicles. This compilation is updated annually.

*See the publications list in the Reference Section of this Manual.

A *citation* from the MCL contains two parts after the designation "MCL." The chapter number for the broad major subject matter is given first, followed by a period. After the period comes the specific section number for the provision within the broad chapter. For example, the MCL provision regarding passing another vehicle on the left would be cited as follows:

MCL 257.638

"MCL" refers to the "Michigan Compiled Laws." The prefix number "257" refers to the main chapter on motor vehicles within the Michigan Compiled Laws. The suffix number ".638" refers to the section number of the specific

provision on passing on the left. This statute may sometimes be referenced by these last three numbers, as “section 638 of the Vehicle Code.”

Citations to the MCL can be looked up in any of the compilations mentioned above. The citations in the “Michigan Vehicle Code” volume published by the Secretary of State do not contain the “MCL” portion of the citation.

B. Local Ordinances

Local ordinances are a type of law enacted by a local unit of government, such as a city or township. They are a major source of traffic law in many parts of Michigan. Some ordinances deal with subjects not addressed by the Michigan Legislature; others are identical to, or substantially similar to, statutes enacted by the Legislature.

Local ordinances must be consistent with the Michigan Vehicle Code. Under Michigan law, local ordinances that conflict with the MVC are void to the extent of the conflict. Therefore, many local governments adopt the MVC “by reference,” that is, they enact a set of ordinances identical to the MVC. In addition, local governments may, and do, enact ordinances governing specific areas. Areas that local governments are allowed to regulate include the following:

- Parking
- Speed regulations
- Traffic signals
- One-way streets
- Stop or yield signs
- Turns
- Use of highways (e.g., restriction to certain vehicles, regulating parades, etc.)
- Bicycles

Magistrates should familiarize themselves with the applicable local ordinances in their jurisdiction because no two sets of local ordinances are exactly the same in format, organization, or numbering system. Ordinance compilations may be obtained from local sources such as courts, public libraries, and city, county, village and township clerks’ offices.

Because preparing a set of ordinances is a detailed and time-consuming task, many localities have adopted a model set of traffic ordinances called the *Uniform Traffic Code for Cities, Townships and Villages (UTC)*. The UTC was prepared by the Michigan Department of State Police in the early 1980s, and was amended in October 2002.* All violations found in the 1980’s version that are also found in the MVC have been removed, leaving only violations from the original UTC that are not also found in statutes. The numbering system was also changed. All cities, townships, and villages, therefore, should adopt the MVC by reference in order to continue to write those violations under local ordinances.

*Copies of the Uniform Traffic Code are available from the Michigan Department of State Police. See the publications list in the Reference Section of this Manual.

Citations to the UTC may be preceded by the letter “R.” “R” means that the citation is to an administrative agency’s rule, here the Department of State Police. An example of a UTC provision follows:

R 28.1498 Sec. 4.98. Opening vehicle doors so as to impede traffic prohibited; violation as civil infraction.

(1) A person shall not open a door of a vehicle in a manner that interferes with or impedes the flow of traffic.

(2) A person who violates this section is responsible for a civil infraction.

C. Michigan Court Rules

The Michigan Court Rules are adopted by the Michigan Supreme Court and set forth procedural requirements for the Michigan courts. The magistrate should be aware of court rules governing traffic adjudication procedures, the powers of the district judge and magistrate, and recordkeeping requirements, for example:

- MCR 4.101, which sets out procedures to be followed in civil infraction cases;
- MCR 4.401, which deals with the district judge’s control over the magistrate’s duties, responsibilities, and decisions;
- MCR 6.615, which sets out procedures to be followed in traffic misdemeanor cases; and,
- MCR 8.119, which sets out court recordkeeping and reporting requirements.

In the foregoing citations, “MCR” refers to “Michigan Court Rules.” The first number before the period refers to the Chapter of the court rules governing a broad topic area, such as district courts. The number after the period refers to the specific rule.

To purchase a copy of the court rules, see the publications list in the Reference Section of this Manual.

D. Published Case Decisions

In published case decisions, the Michigan Supreme Court and Court of Appeals resolve questions not directly addressed by the foregoing statutes, ordinances, and court rules. Michigan Supreme Court decisions are collected in reporters called the *Michigan Reports*. Court of Appeals decisions appear in reporters called *Michigan Appeals Reports*. All Michigan trial courts are required to follow published case decisions by the state’s appellate courts.

Note: The Michigan Supreme Court publishes all of its decisions. The Court of Appeals, however, only publishes selected decisions. Michigan trial courts are only required to follow published decisions by the Court of Appeals. Unpublished Court of Appeals opinions may be considered but are not binding. MCR 7.215(C)(1). On published Court of Appeals opinions that conflict with one another, MCR 7.215(I)(1) requires a Court

of Appeals panel to follow the rule of law established by the prior opinion issued on or after November 1, 1990.

Citations to Michigan cases follow this format:

- *Jackson v Trogan*, 364 Mich 148 (1961).
- *People v Ferency*, 133 Mich App 526 (1984).

The italicized names at the beginning of the citation identify the parties to the case. The first name identifies the plaintiff, the second the defendant. The first number following the parties' names identifies the volume of the *Michigan Reports* or the *Michigan Appeals Reports* in which the published case is located. The "Mich" or "Mich App" portion of the cite refers to the Supreme Court or the Court of Appeals, respectively. The number following the court designation refers to the page in the reporter volume at which the opinion is found. Finally, the year in parentheses is the year the decision was issued.*

Note: Cases where the plaintiff is the "People" (e.g., *People v Ferency*) are criminal cases. In criminal cases, the prosecuting attorney proceeds against the defendant on behalf of the People of the State of Michigan.

Michigan court decisions are published in a parallel reporter from West Publishing Company, called *Northwestern Reporter*. The elements of a parallel citation to the *Northwestern Reporter* are the same as noted above, and appear in the same order. When used, the parallel citation always follows the official *Michigan Reports* or *Michigan Appeals Reports* citation. A citation to the official and parallel reports of *People v Ferency* follows:

People v Ferency, 133 Mich App 526; 351 NW2d 225 (1984).

Parallel citations for cases are not always given in legal reference materials. This Manual will not use parallel case citations.

Note: Where a direct quote is taken from an appellate opinion in this Manual, or, where a principle under discussion is taken from a brief portion of a lengthy opinion, the exact page where the quote or discussion can be found will be indicated in the citation by a second page number appearing after the number of the initial page in the reporter. Thus, where a quote or discussion in this Manual is referenced by a citation such as *People v Ferency*, 133 Mich App 526, 529 (1984), the "529" indicates the page on which the quote or discussion can be found.

E. Attorney General Opinions

Occasionally, the Michigan Attorney General issues opinions about legal issues that magistrates might encounter. The courts are not required to follow these opinions, but they typically offer helpful guidance.

Attorney General opinions are found in a multi-volume set called *Report of the Attorney General*. Each volume in the set contains opinions issued during a one or two year period. Attorney General opinions are cited as follows:

OAG, 1987, No 6481, p 228 (December 9, 1987)

*Michigan Supreme Court and Court of Appeals opinions are accessible on-line at <http://courtofappeals.mijud.net/resources/opinions.htm> (last visited February 10, 2003), and at <http://www.icle.org/michlaw> (last visited February 10, 2003).

“OAG” in the above cite refers to “Opinion of the Attorney General,” and references the *Report of the Attorney General* compilation. The number “No 6481” refers to the number assigned to the opinion. The opinion number is followed by the page number in the *Report of the Attorney General* compilation, and the exact date on which the opinion was issued. To find an attorney general opinion from the above cite, the user would first look for the volume for the year 1987, and then turn in that volume to page 228, checking to make sure that the date and opinion number match the date and number in the citation.

The *Report of the Attorney General* compilation has index volumes in which opinions can be found under key topic words.*

*Attorney general opinions are accessible on-line at http://www.ag.state.mi.us/opinion/op_main.htm (last visited February 10, 2003).

2.3 Finding the Law

A. Statutes Generally

The foregoing statutory compilations typically have two entry points for the user. First, most compilations have a *table of contents* at the beginning of each major topic of legislation. A table of contents overviews the statutes in the order in which they appear, giving the heading designations for each statute along with the section number. Statutes listed in a table of contents are typically found in groups relating to similar subject matters. In the table of contents to the Secretary of State’s volume of the Michigan Vehicle Code, for example, all the statutes relating to the Motor Vehicle Service and Repair Act are listed in one group. To find a statute in a table of contents, the user thinks of several key words that describe the topic with which he or she is concerned and looks for headings in the table of contents that appear to be related.

Most compilations also have a *subject matter index* at the end of the set or volume, in which subject matter listings appear in alphabetical order. The section numbers of statutes pertaining to a given subject are all collected under one subject listing, even though they may not appear in sequence to each other in the table of contents. As is the case with the table of contents, the user finds a statute in the subject matter index by thinking of descriptive key words, and then looking for these words or related words in the index. A thorough researcher will check both the table of contents and the index of a statutory compilation.

B. Using the Michigan Vehicle Code

The Michigan Vehicle Code,* originally enacted in 1949, is of major importance to magistrates in civil infraction cases. The MVC is located in Chapter 257 of the Michigan Compiled Laws along with other acts pertaining to motor vehicles. The MVC table of contents divides the MVC into nine subchapters; the numbering of the sections within each subchapter has no apparent relationship with the chapter numbers in the table of contents. The MVC’s nine chapters are:

I. Definitions — Defines key words and phrases used in the other eight chapters of the MVC.

*The Michigan Vehicle Code is also known as “Act 300,” after 1949 PA 300, which gathered various traffic laws into a group of sequential sections.

II. Administration, Registration, Certificate of Title, Anti-Theft — Deals with such issues as transfers of title, dealer licenses, and abandoned vehicles.

III. Operator's and Chauffeur's License — Includes provisions about license requirements and suspension, cancellation, or revocation of licenses.

IV. Civil Liability Act — Addresses civil liability of owners and operators of motor vehicles.

V. Financial Responsibility Act — Magistrates come into contact with this section of the MVC when a defendant is arrested for driving with a license suspended after failure to pay a civil judgment or without proof of insurance.

VI. Obedience to and Effect of Traffic Laws — Contains the “rules of the road.”

VII. Registration Fees — Includes sections regulating certificates of title and license fees.

VIII. Penalties — Prescribes penalties and fines for MVC violations.

IX. Miscellaneous — Contains legislative housekeeping matters.

Magistrates will most often use chapters I, III, V, VI and VIII. Using the index in the MVC compilation prepared by the Secretary of State is not always easy, and the user should try several different key words when using it. Many of the traffic civil infractions are found as subtopics under the key term “motor vehicles.”

*For definitions of “felony” and “misdemeanor” see Section 1.2, above.

Notes: (1) The Michigan Vehicle Code contains criminal felony and misdemeanor traffic offenses as well as civil traffic infractions.* For an offense in the Michigan Vehicle Code to be a felony or a civil infraction, the Vehicle Code section that creates the offense must specifically say so. If a section of the Michigan Vehicle Code does not classify the offense it has defined, that offense will be treated as a misdemeanor. MCL 257.901(1). Uniform Traffic Code provisions will specify whether a given offense is a misdemeanor or a civil infraction. MCL 257.951(3).

(2) The MVC makes an important distinction between the words “shall” and “may.” The word “shall” is mandatory; a statute using this word requires the action it describes. The word “may” is permissive; a statute using this word allows discretion with regard to the action it describes. MCL 257.82.

C. Cases

Appellate court decisions about issues raised by Michigan traffic statutes can most easily be found by consulting the annotations following each statute in West's *Michigan Compiled Laws Annotated* or in Lexis-Nexis' *Michigan Compiled Laws Service*.

2.4 Overview of Procedure in Traffic Cases

A. Differences Between Civil Infraction and Criminal Procedure

The decriminalization of minor traffic offenses in 1979 substantially changed the court procedures for handling these cases. Because the defendant in a civil infraction case no longer faces the possibility of going to jail,* he or she is no longer entitled to all of the procedural safeguards associated with a criminal trial. Accordingly, formal and informal civil infraction hearings in traffic cases differ from criminal trials in the following respects:

- Jury trial is no longer allowed. MCL 257.746(1), 257.747(4).
- A defendant may be found responsible for a traffic civil infraction by only a preponderance of the evidence, rather than by the criminal standard of proof beyond a reasonable doubt.* MCL 257.746(4), 257.747(5).
- Because civil infractions are not “crimes,” findings of responsibility are not reported on the defendant’s criminal record. However, many civil infractions must still appear on the defendant’s driving record maintained by the Secretary of State. MCL 257.6a, 257.732.

B. Issuance of Citation

Both civil infraction and criminal misdemeanor traffic proceedings begin when a police officer issues a citation to a driver. Under MCL 257.742(1) and (3), a police officer may cite a driver for a civil infraction if:*

- The officer witnesses the offense;
- After the officer investigates a traffic accident, he or she has reasonable cause to believe the driver committed a civil infraction; or,
- After the officer investigates a witness’s complaint, the officer has reasonable cause to believe the driver committed a civil infraction, and the prosecuting attorney approves the issuance of the citation in writing.

The Michigan Uniform Law Citation* that the citing officer issues consists of four parts:

- 1) The original, or court copy, which is filed with the court;
- 2) The police copy, which the citing officer retains;
- 3) The misdemeanor copy, which is given to the defendant if the charged offense is a misdemeanor; and,
- 4) The civil infraction copy, which is given to the defendant if the charged offense is a civil infraction.

The original copy of the citation filed with the district court serves as the complaint. MCR 4.101(A)(1). The State of Michigan, or the local government whose police department issued the citation, is known as the plaintiff. The cited driver (or passenger) is known as the defendant. The copy given to the defendant (the misdemeanor and/or civil infraction copy) serves as a

*A defendant may be jailed under a judge’s civil contempt power for failure to comply with a judgment. See Section 4.6(C).

*See Section 5.2(A) for discussion of these standards.

*Sample citation forms appear at Section 2.6, below.

*MCL 257.727c(1), 257.742(4), and 257.743.

summons that brings the defendant under the court's jurisdiction and notifies the defendant of the charges. MCR 4.101(A)(2).

Note: Multi-charge citations are a form of the Uniform Law Citation with multiple "originals" allowing an officer to cite three violations on a single form (Form UC-01a). For each violation, the officer must file an "original" with the court. Each of the originals shows the court the other two violations written. When using Form UC-01a where more than one violation is charged, the officer must file a copy with the court for each violation.

When the defendant is not a Michigan resident, special proceedings apply. The citing officer is required by law to take the defendant's license as security for the defendant's appearance in court unless the nonresident leaves either a guaranteed appearance certificate, i.e., bond card, or a sum not to exceed \$100. If the court is open and a magistrate is available, the nonresident may demand to be taken to the nearest magistrate to answer the civil infraction charge. MCL 257.749.

C. Processing a Citation for a Traffic Misdemeanor or Civil Infraction After Defendant Responds

1. Misdemeanors

Misdemeanors are criminal offenses subject to procedural safeguards that are not available for civil infractions. If a defendant is cited for a misdemeanor offense under the Vehicle Code, the magistrate's role after the defendant responds is limited by MCL 600.8511(b).^{*} The magistrate may accept a plea and impose sentence in a misdemeanor case arising under the Vehicle Code or a similar local ordinance only if:

- The misdemeanor penalty does not exceed 93 days in jail and/or a fine;
- The defendant pleads guilty or no contest^{*}; and,
- The offense is *not* a drunk driving offense governed by MCL 257.625, MCL 257.625m, or a local ordinance that substantially corresponds with one of those statutes.

The district judge assumes jurisdiction over misdemeanor cases under the Vehicle Code that do not meet the foregoing criteria. In drunk driving cases, the magistrate may arraign and set bond.

Note: If a magistrate intends to impose a jail term upon a defendant, he or she must advise the defendant of the right to counsel. Indigent defendants are entitled to court-appointed counsel, and the magistrate has the authority (if conferred by the district judge) to grant petitions for the appointment of an attorney for an indigent defendant in a misdemeanor case punishable by imprisonment for not more than one year, or an ordinance violation punishable by imprisonment. MCL 600.8513(2)(a).

^{*}See Section 1.4(B).

^{*}No contest pleas may only be entered with court consent. MCR 6.301(B).

2. Civil Infractions

All defendants who receive a citation for a traffic civil infraction are required to make an appearance in person, by representation, or by mail.* Upon making an appearance the defendant must respond to the citation in one of the following ways:

- Admit responsibility, without explanation;
- Admit responsibility, with explanation; or,
- Deny responsibility for the civil infraction.

If the defendant *admits responsibility without explanation*, the magistrate finds the defendant responsible for the infraction and imposes the appropriate sanctions.

If the defendant *admits responsibility with an explanation*, the magistrate determines whether the facts defendant admits are the elements that constitute the charged offense and considers any mitigating circumstances related in the explanation. Upon consideration of the explanation, the magistrate decides whether to accept the defendant's admission and may impose the appropriate sanctions. The magistrate may mitigate the sanctions against the defendant in light of his or her explanation. MCL 257.745(4).

Defendants who *deny responsibility* may choose to appear at either a formal hearing before a judge, or an informal hearing before a judge or an authorized district court magistrate.* If a defendant fails to specify the type of hearing, the court must schedule an informal hearing. At a formal hearing, both parties may be represented by an attorney, but the defendant is not entitled to court-appointed counsel. Neither party may be represented by an attorney at an informal hearing. If the defendant is found responsible, the appropriate sanctions are imposed. MCL 257.746(1)-(2), 257.747(1)-(2), and MCR 4.101(E)(2).

If a driver fails to respond to a traffic citation or to appear for a scheduled hearing, the magistrate must enter a *default determination of responsibility*. This determination will include the imposition of sanctions. However, the defendant may move to set aside the default judgment for good cause. To set aside a default judgment, the defendant must make or file an oral or written motion within 14 days after the entry of the default, explain the reasons for the non-appearance, and provide a cash bond equivalent to the fines and costs imposed at the time the motion is filed. MCL 257.748, and MCR 4.101(B), (C), and (E). See also Sections 4.5-4.6.

D. Appeals

Either party has a right to appeal a magistrate's decision after an informal hearing and to have the case reheard at a formal hearing before a district judge. The party appealing must request an appeal in writing within seven days of the judgment on a form provided by the court. A defendant who appeals must post an appeal bond equal to the fine and costs imposed at the time the appeal is taken, unless the fine and costs have already been paid. MCR

*MCL 257.743, 257.745, and MCR 4.101(B)(1). The procedures summarized here are discussed in more detail in Units 3 and 4 of this Manual. See Section 2.7 for a flow chart of how the court processes a citation for a civil infraction.

*See Section 4.2 for information on distinguishing informal and formal hearings.

*See also Sections 1.5(A) and 4.4.

4.101(G)(2)(a). A plaintiff's appeal must be authorized in writing by the prosecutor; no bond is required, however. MCR 4.101(G)(2)(b).*

Either party has a right to an appeal following a formal hearing. This appeal is taken to the circuit court within 21 days after entry of the district court's decision, in accordance with the rules set forth in MCR 7.101. The bond requirements are the same as those that apply to appeals from informal hearings. MCR 4.101(G)(1).

A defendant has no right to appeal from an admission of responsibility. However, within 14 days after the admission, the defendant may file with the district court a written request to withdraw it. The defendant must post a bond equal to the fine and costs imposed, unless these have already been paid. If the court grants the defendant's request, it will schedule the case for either a formal or an informal hearing, at the court's discretion. MCR 4.101(G)(3).

2.5 Sanctions Under the Michigan Vehicle Code

MCL 257.901(1) provides that all violations of the Michigan Vehicle Code (MVC) are misdemeanors unless the violation is specifically declared to be a felony or a civil infraction. Depending on the nature of the offense, violations of the MVC or substantially corresponding local ordinances may be penalized by criminal, civil, or licensing sanctions. This section discusses the general provisions in the MVC with regard to all three types of sanctions.

Felony and misdemeanor violations of the MVC are penalized by the **criminal sanctions** of imprisonment and/or a fine, which are imposed by the court. Such violations appear on the defendant's criminal record and, in certain cases, on his or her driving record.

Civil infractions under the MVC are penalized by **civil sanctions**, which can involve a fine, court costs, or participation in an education, rehabilitation, or treatment program. These sanctions are imposed by the court. The determination of responsibility for a civil infraction does not appear on the defendant's criminal record, but it may appear on his or her driving record.

Licensing sanctions can apply to felonies, misdemeanors, and civil infractions. Licensing sanctions may consist of license suspension or revocation, issuance of a restricted license, or the assessment of points on a defendant's driving record. The Secretary of State is responsible for imposing most licensing sanctions.

Note: Vehicle sanctions may also apply to defendants convicted of certain repeat drunk driving offenses and of repeated moving violations committed while driving with a suspended or revoked license. These sanctions may consist of vehicle immobilization, vehicle forfeiture, or registration denial. For discussion of these sanctions, see 2 *Traffic Benchbook - Revised Edition* (MJI, 1999), Section 2.11.

A. Licensing Sanctions—Abstracts of Conviction

Licensing sanctions for violations of the MVC may involve assessment of "points" on the defendant's driving record, as well as suspension, revocation,

or restriction of the defendant's driver's license. Magistrates should be aware that assessing points is *not* the court's function; only the Secretary of State may perform this duty. Before October 1, 1999, both courts and the Secretary of State shared statutory authority to order the suspension, revocation, or restriction of a driver's license. For arrests after October 1, 1999, however, the authority to impose these sanctions has been consolidated in the Secretary of State in *all* cases, *except* for:

- Drug suspensions ordered under MCL 333.7408a; or,
- No proof of insurance suspensions under MCL 257.328(3).

To facilitate the imposition of licensing sanctions, courts must report most misdemeanor convictions and determinations of responsibility for civil infractions under the MVC to the Secretary of State within a specified time provided in MCL 257.732. The court clerk is responsible for abstracting such judgments electronically, or on Form DS1-22, which is provided by the Secretary of State. The Secretary of State enters the misdemeanor conviction or finding of responsibility for a civil infraction on the defendant's driving record and imposes the appropriate licensing sanction.

Note: Every person required to forward abstracts to the Secretary of State must certify for the period from January 1 through June 30 and for the period July 1 through December 31 that all abstracts required to be forwarded during the period have been forwarded. The certification must be made on a form provided by the Secretary of State and filed not later than 28 days after the end of the period covered by the certification. MCL 257.732(12)-(13).

In cases where there has been a charge of, or citation for, violating or attempting to violate the Vehicle Code or a substantially corresponding local ordinance, MCL 257.732(1)(a) requires that an abstract be prepared and forwarded to the Secretary of State within 14 days after:

- A conviction;
- A forfeiture of bail;
- An entry of a civil infraction determination; or,
- An entry of a default judgment.*

Exceptions to this requirement are listed in MCL 257.732(15). Abstracts need not be submitted for the following convictions or civil infraction determinations:

- Parking or standing violations.
- Non-moving violations that are not the basis for a license suspension, revocation, or denial. The Secretary of State must inform the court of the offenses in this category. MCL 257.732(17).
- Violations under Chapter II of the Vehicle Code (regarding administration, registration, certificate of title, and anti-theft) that are not the basis for a license suspension, revocation, or denial. The

*Additional requirements apply in drunk driving cases under §625 or §625m of the Vehicle Code. See 2 *Traffic Benchbook - Revised Edition* (MJI, 1999), Section 2.12(C).

Secretary of State must inform the court of the offenses in this category. MCL 257.732(17).

- Pedestrian, passenger, or bicycle violations, other than certain violations under MCL 436.1703 (minor purchasing, consuming, or possessing alcohol), MCL 257.624a-257.624b (open container of alcohol and minor in possession), or substantially corresponding local ordinances.
- Safety belt violations under MCL 257.710e.

B. Criminal Sanctions Under the MVC

Chapter VIII of the Michigan Vehicle Code contains general penalty provisions for the felonies and misdemeanors contained in the MVC. These penalties apply unless a different penalty is expressly provided for a particular offense. The general MVC penalty provisions for felonies and misdemeanors are as follows:

- **Felonies:** Unless a different penalty is provided, MCL 257.902 imposes a prison term of not less than one year nor more than five years and/or a fine of not less than \$500 nor more than \$5000.
- **Misdemeanors:** Unless a different penalty is provided, MCL 257.901(2) imposes a maximum 90 day jail term and/or a maximum \$100 fine for misdemeanors defined by the MVC.

Different penalty provisions may apply for traffic offenses defined in local ordinances. Consult these ordinances for the applicable penalties. Specific penalties for particular traffic offenses are listed in both volumes of *Traffic Benchbook - Revised Edition* (MJJ, 1999).

C. Civil Sanctions Under the Motor Vehicle Code

1. In General

Chapter VIII of the Michigan Vehicle Code (MVC) also contains general penalty provisions for civil infractions, which apply unless a different penalty is expressly provided for a particular offense. For most civil infractions involving noncommercial vehicles, MCL 257.907(2) and (4) provide for a fine of up to \$100 plus costs not to exceed \$100. For commercial motor vehicles, the maximum fine is \$250.* MCL 257.907(3). The penalty may also include education, rehabilitation, or a treatment program. MCL 257.907(5).

The district court may establish a schedule of civil fines and costs for some or all civil infractions. The State Court Administrative Office also publishes a recommended schedule of civil fines and costs for first time civil infractions.*

Note: MCL 600.8381 states that except in the case of parking violations, no less than \$9 shall be collected as costs for civil infractions and paid to the clerk of the district court. These funds shall be transmitted by the clerk as specified in the statute. The \$9 in costs addressed by this statute are considered to be part of the \$100 maximum in costs allowed in MCL

*Fines for overweight commercial vehicles may exceed \$250. MCL 257.724(3).

*This schedule is found in the Reference Section.

257.907(4). This amount should not be treated as an additional cost in excess of the \$100 maximum.

Pursuant to MCL 257.321a(2), a person fined under the MVC for a misdemeanor traffic offense or a traffic civil infraction has 28 days to pay before any license sanctions for noncompliance with judgment may be initiated. Once the 28 days have passed, an additional 14 days notice must be given the defendant before his or her license can be suspended.* A magistrate has discretion to give a person an extension of time to pay fines and costs, although a court rule requires immediate payment, i.e., at the time of assessment, unless good cause is shown. See MCR 1.110 and MCL 257.907(2). If such an extension is given, the 28-day period in MCL 257.321a(2) begins at the end of the extended period of time. In light of the 28-day period and the 14-day notice provision in the statute, the State Court Administrative Office recommends giving extensions sparingly, in cases of real, demonstrated hardship.

Note: Shorter notice requirements apply to persons convicted of drunk driving offenses under Vehicle Code §625 or other alcohol-related offenses. See MCL 257.321a(3)-(4), discussed at 2 *Traffic Benchbook - Revised Edition*, (MJI, 1999), Section 2.13(B)(1).

2. Mitigation or Waiver of Civil Fines and Costs

Under MCL 257.745(4), the magistrate has discretion to mitigate the sanctions imposed for a civil infraction in light of the circumstances presented in a defendant's admission of responsibility with explanation. The magistrate should consult with the district judge about the court's policies regarding mitigation of sanctions.* While magistrates may consider mitigating factors and impose fewer sanctions than the schedule prescribes, they may not impose sanctions in excess of the scheduled amounts. MCL 257.745(4), *People v Courts*, 401 Mich 57, 61-62 (1977), and *People v Bogedain*, 185 Mich App 349, 351-352 (1990). Moreover, magistrates may not increase the scheduled fine merely because the defendant has requested a hearing. MCR 4.101(F)(1).

In the following cases, the magistrate is required to **waive** the fine and costs:

- Failure to have a driver's license in possession (MCL 257.311), upon certification by a law enforcement agency that the defendant, before the appearance date on the citation, produced a license that was valid on the date the violation occurred. MCL 257.901a.
- Equipment violations under MCL 257.683, upon receipt of certification by a law enforcement agency that repair was made before the appearance date on the citation. MCL 257.907(9).
- Violations of the mandatory child restraint law (MCL 257.710d), if the offender, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the law's requirements. MCL 257.907(12).
- Failure to produce or sign registration certificate (MCL 257.223), upon certification by law enforcement agency that the defendant, before the appearance date on the citation, produced a certificate that was valid and signed on the date the violation occurred. MCL 257.907(14).

*Defendants who fail to pay the fine for a traffic offense are subject to license suspension and other sanctions. See Section 4.6.

*Mitigation of sanctions is discussed further in Section 3.4(D).

Section 2.5

*On judgments that must be abstracted, see Section 2.5(A).

Note: The magistrate's **mitigation or waiver of fines and costs does not amount to a dismissal of the citation**. Thus, if the infraction is one that must be put onto a defendant's driving record, the court must still send an abstract of the judgment to the Secretary of State upon a finding of responsibility, regardless of the sanctions imposed.*